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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

TRINITY MORGAN,

Plaintiff

-against-

**CREDIT ONE BANK, N.A.. and
JOHN DOES 1-25,**

Defendants

Civil Case No.:

CIVIL ACTION

**COMPLAINT
and
JURY TRIAL DEMAND**

15 Plaintiff TRINITY MORGAN (“Plaintiff”), by and through her undersigned
16 attorneys, brings this Complaint against the Defendant CREDIT ONE BANK, N.A.
17 and JOHN DOES 1-25 (hereinafter referred to as “Defendant”), and respectfully
18 sets forth, complains and alleges, upon information and belief, the following:
19

20
21 **INTRODUCTION/PRELIMINARY STATEMENT**

- 22 1. Plaintiff brings this action on her own behalf for damages and declaratory
23 and injunctive relief arising from the Defendant’s violation(s) under Title 47
24 of the United States Code, §227 commonly known as the Telephone
25 Consumer Protection Act (TCPA). Plaintiff has been receiving incessant
26 unwanted calls from the Defendant and their thus-far unidentified third-party
27 calling vendors, all in an attempt to collect a debt from an unknown third
28 party, and seeks damages as a result of those calls.

- 1 2. The TCPA prohibits auto-dialed calls which are placed to a called party's
2 cellular phone without that party's consent. Senator Hollings, the TCPA's
3 sponsor, described these auto-dialed calls as "the scourge of modern
4 civilization. They wake us up in the morning; they interrupt our dinner at
5 night; they force the sick and elderly out of bed; they hound us until we want
6 to rip the telephone out of the wall." *Osorio v. State Farm Bank, F.S.B.*, 746
7 F.3d 1242, 1255-56 (11th Cir. 2014), *citing*, 137 Cong. Rec. 30,821 (1991).
8
9 3. In 1991, Congress responded to these abuses by passing the TCPA. In
10 enacting the TCPA, Congress made findings that telemarketing had become
11 "pervasive due to the increased use of cost-effective telemarketing
12 techniques." *See*, PL 102-243, § 2(1). "Residential telephone subscribers
13 consider automated or prerecorded telephone calls, regardless of the content
14 or the initiator of the message, to be a nuisance and an invasion of privacy."
15 *Id.* § 2(10). The TCPA's findings also reflect Congress's conclusion that
16 "[i]ndividuals' privacy rights, public safety interests, and commercial
17 freedoms of speech and trade must be balanced in a way that protects the
18 privacy of individuals and permits legitimate telemarketing practices." *Id.* §
19 2(9). Consumers who receive these unauthorized calls thus have suffered a
20 distinct privacy-related interest, namely the "intentional intru[sion] . . . upon
21 their solitude or seclusion of their private affairs or concerns." *Intrusion*
22 *Upon Seclusion*, Restatement (Second) of Torts § 652B (1977).
23

24 **PARTIES**

- 25 4. Plaintiff is a natural person who resides in Atlanta, Georgia.
26 5. Defendant is a national banking association with its corporate headquarters
27 located at 585 Pilot Road, Las Vegas, Nevada 89119.
28 6. JOHN DOES 1-25 is a fictitious name, meant to represent those calling and

1 dialing vendors utilized by Defendant to place the actual calls to Plaintiff's
2 cellular phone on Defendant's behalf, whom Plaintiff will name once their
3 identities are uncovered.

4 **JURISDICTION AND VENUE**

5 7. The Court has jurisdiction over this matter pursuant to 28 USC §1331.

6 8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).
7

8 **ALLEGATIONS OF FACTS**

9
10 9. Plaintiff repeats, reiterates and incorporates the allegations contained in the
11 preceding paragraphs with the same force and effect as if the same were set
12 forth at length herein.

13
14 10. On information and belief, on a date better known to the Defendant,
15 Defendant began its campaign of communicating with the Plaintiff via the
16 use of an automated telephone dialing system and prerecorded messages
17 throughout the past four years by calling the Plaintiff's cellular telephone
18 phone number of (470) 798-8506 on dozens of occasions.

19 11. When the Plaintiff would answer the Defendant's calls, the Defendants'
20 representatives ask to speak with an individual named Carl H**** (named
21 redacted to prevent third-party's identity).

22 12. Plaintiff is the customary and sole user of the cellular phone number (470)
23 798-8506.

24 13. The Defendant called from numerous phone numbers, including but not
25 limited to (855)530-4247.

26 14. Plaintiff confirmed that these phone numbers belong to Defendant by calling
27 these numbers and hearing a recorded greeting:

28 "Thank you for calling Credit One Bank."

1 15. Defendant used an automated telephone dialing system to call the Plaintiff
2 on her cell phone typically 5-6 times a day.

3 16. Defendant's use of an automated telephone dialing system was clearly
4 indicated by (1) the usage and placement of prerecorded messages (2) the
5 placement of several or more calls to the Plaintiff per day, (3) hold music
6 playing when the Plaintiff would answer the phone, and (4) the telltale clicks
7 and pauses before a human voice would come on the line when the Plaintiff
8 would answer the phone.

9 17. The Plaintiff never gave the Defendant her prior, express permission to call
10 her cell phone via the use of an automated telephone dialing system or
11 prerecorded voice.

12 18. Plaintiff had no wish to be contacted on her cell phone via the use of an
13 autodialer or prerecorded voice, and expressly directed Defendant to stop
14 calling her cell phone number on numerous occasions.

15 19. On a number of occasions, the Plaintiff advised the Defendant that they were
16 calling the wrong person, that she was not Carl H**** (named redacted to
17 prevent third-party's identity), and that the Defendant should cease calling
18 her.
19

20 20. The Defendant disregarded the Plaintiff's pleas for the calls to stop, and
21 continued placing auto-dialed calls and prerecorded voice messages to her
22 phone.

23 21. By placing auto-dialed calls to the Plaintiff's cell phone, the Defendant
24 violated 47 USC §227(b)(A)(iii) which prohibits using any automated
25 telephone dialing system or an artificial prerecorded voice to any telephone
26 number assigned to a cellular telephone service.

27 22. Plaintiff suffered actual damages because the Defendant's calls to her cell
28 phone deprived her of the use of her cellular phone during the times that the

1 Defendant was calling her cellular phones, depleted battery life of the
2 cellular telephone, and by invading on the Plaintiff's right to privacy and
3 seclusion, which was the very harm that Congress sought to prevent by
4 enacting the TCPA.

5 23.The Defendant's repeated calls further caused the Plaintiff to be harassed,
6 stressed, frustrated and annoyed. The Defendant's repeated calls interrupted
7 the Plaintiff's day and wasted the Plaintiff's time spent answering and
8 otherwise addressing these repeated phone calls.

9 24.Defendant's communication efforts attempted and/or directed towards the
10 Plaintiff violated various provisions of the TCPA, including but not limited
11 to 47 USC §227(b)(A)(iii).

12 25.As a result of Defendant's violations of the TCPA, Plaintiff has been
13 damaged and is entitled to damages in accordance with the TCPA.
14

15 **FIRST CAUSE OF ACTION**

16 26.Plaintiff repeats and incorporates by reference all of the above paragraphs of
17 the Complaint as though fully stated herein.

18 27.The foregoing acts and omissions of Defendants constitute numerous and
19 multiple negligent violations of the TCPA, including but not limited to each
20 and every one of the above cited provisions of 47 U.S.C. § 227(b) *et seq.*

21 28.As a result of Defendant's violations of 47 U.S.C. § 227(b) *et seq.* Plaintiff
22 is entitled to an award of \$500.00 for each and every negligent violation of
23 the TCPA pursuant to 47 U.S.C. § 227(b)3.

24 29. As a result of Defendant's violations of 47 U.S.C. § 227(b) *et seq.* Plaintiff
25 is also entitled to an award of treble damages \$1,500.00 for each and every
26 knowing and/or willful violation of the TCPA pursuant to 47 U.S.C. §
27 227(b)3.
28

DEMAND FOR TRIAL BY JURY

30. Plaintiff hereby respectfully requests a trial by jury for all claims and issues in its Complaint to which it is or may be entitled to a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendants as follows:

A. For mandatory statutory damages of \$500 each provided and pursuant to 47 USC §227(c)(2)(G)(3)(B), for all calls placed to the Plaintiff's cellular phone;

B. Plaintiff requests enhanced trebled damages of \$1,500 to be awarded to the Plaintiff per call, in accordance with the TCPA, for the Defendant's willful violations of the TCPA;

C. For any such other and further relief, as well as further costs, expenses and disbursements of this action, as this Court may deem just and proper.

Dated: September 15, 2017

/s/ Misty Oaks Paxton

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TO FILE PRO HAC VICE APPLICATION

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